

§ 512.5

12 CFR Ch. V (1–1–00 Edition)

§ 512.5 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the Office resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Deputy Chief Counsel for Enforcement or the appropriate Regional Counsel for Enforcement.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Office in accordance with the provisions of part 513 of this chapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Office, for good cause, may exclude a particular attorney from further participation in any investigation in which the Office has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Office instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Office may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Office may permit or direct.

[54 FR 49457, Nov. 30, 1989, as amended at 60 FR 66717, Dec. 26, 1995]

§ 512.6 Obstruction of the proceedings.

The designated representative shall report to the Office any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the Office may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

§ 512.7 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Chief Counsel or his designee to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Chief Counsel or his designee, as appropriate, may:

- (1) Deny the application;
- (2) Quash or revoke the subpoena;
- (3) Modify the subpoena; or
- (4) Condition the granting of the application on such terms as the Chief Counsel or his designee determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Office by any of its designated representatives.

[54 FR 49457, Nov. 30, 1989, as amended at 56 FR 38317, Aug. 12, 1991]

PART 513—PRACTICE BEFORE THE OFFICE

Sec.

513.1 Scope of part.

513.2 Definitions.

513.3 Who may practice.

513.4 Suspension and debarment.

513.5 Reinstatement.

513.6 Duty to file information concerning adverse judicial or administrative action.

513.7 Proceeding under this part.

AUTHORITY: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 78 l).

SOURCE: 54 FR 49459, Nov. 30, 1989, unless otherwise noted.

§ 513.1 Scope of part.

This part prescribes rules with regard to general practice before the Office on one's own behalf or in a representative capacity and prescribes rules describing the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Office. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Office thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation under this chapter from a rulemaking hearing in accordance with § 510.2, from an adjudicatory proceeding in accordance with § 509.6(a)(1), from a removal hearing in accordance with § 508.3, or from an investigatory proceeding in accordance with § 512.5(b)(2) of this chapter.

[54 FR 49459, Nov. 30, 1989, as amended at 56 FR 38317, Aug. 12, 1991]

§ 513.2 Definitions.

As used in this part:

(a) *Office* means the Office;

(b) The term *Secretary* means the Secretary and any Assistant or Acting Secretary to the Office;